IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1025 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAURABH NATWARLAL SOPARKAR

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. This is an application u/s 482 of the Criminal Procedure Code at the instance of original accused No.6, for the purpose of quashing the complaint in respect of

Criminal Case No.2355 of 1999, and for quashing the process issued against the said accused, on the basis of the complaint filed by respondent No.2 [original complainant]. The said complainant had filed a complaint u/s 138 of the Negotiable Instrument Act in respect of a cheque issued by the Company in which the present petitioner - accused No.6 was a Director.

2. Looking to the complaint which is annexed to the present petition, it appears that the petitioner is made accused No.6 only in his capacity as one of the Directors of the Company on whose behalf the cheque was issued, and in order to punish the said accused by making him responsible for the offence in question by virtue of section 141 of the Negotiable Instrument Act. The complaint suggests that the present petitioner - accused No.6 "was in charge of, and was responsible to the company for the conduct of the business of the company" at the relevant point of time.

2.1 It is pertinent to note that, apart from the allegation that the present petitioner was one of the Directors of the Company at the relevant point of time, no other allegation is made against the present petitioner. The complaint also mentions that the cheque was issued by the Company, and that the same was signed by accused No.7, and not by the present petitioner accused No.6.

3. Even otherwise, the present petitioner has placed sufficient evidentiary material on record of the present application to show that he was not a Director of the Company even on the date of issuance of the cheque. The present petitioner had resigned as a Director w.e.f. 3rd of October 1998, which is evidenced by the filing of Form No.32 filed with the Registrar of Companies. This is a statutory form which is required to be filed with the Registrar of Companies, within the prescribed period. In this context, what requires to be noted is that the petitioner had resigned w.e.f. 3rd of October 1998, whereas the cheque which has been dishonoured and which is the basis of the complaint u/s 138 of the Negotiable Instrument Act is dated 31st March 1999. Thus, on the date of the cheque, the present petitioner was not a Director of the Company. Obviously therefore, section 141 of the Negotiable Instrument Act would have no application so far as the present petitioner is concerned.

4. It is also pertinent to note that the respondent No.2 - original complainant has been served in respect of

the present application, but has chosen not to appear and contest the same.

5. In the premises aforesaid, I am satisfied that the continuation of the criminal case as against the present petitioner would amount to an abuse of the process of law, and would not be justified. In the premises aforesaid, it is held and directed that the process issued, as also the complaint as regards the present petitioner [original accused No.6] is quashed and set aside. Rule is made absolute accordingly.

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